

Internal Revenue Service  
**memorandum**

date: **AUG 28 1991**

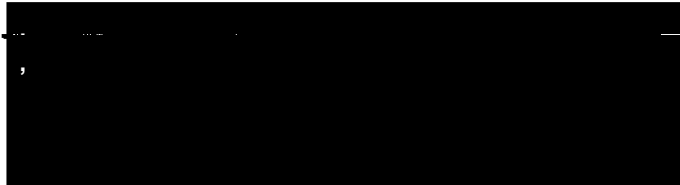
to: Director, Internal Revenue Service Center  
Kansas City, MO  
Attn: Entity Control

from: Technical Assistant  
Employee Benefits and Exempt Organizations

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subject: CC:EE:3 - TR-45-1266-91  
Railroad Retirement Tax Act Status

Attached for your information and appropriate action is a copy of a letter from the Railroad Retirement Board concerning the status under the Railroad Retirement Act and the Railroad Unemployment Tax Act of:



We have reviewed the opinion of the Railroad Retirement Board and, based solely upon the information submitted, concur in the conclusion reached by the Board that [REDACTED] is not an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(Signed) **Ronald L. Moore**

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RONALD L. MOORE

Attachment:

Copy of letter from Railroad Retirement Board

cc: Mr. Gary Kuper  
Internal Revenue Service  
200 South Hanley  
Clayton, MO 63105

**008973**

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 RUSH STREET  
CHICAGO, ILLINOIS 60611

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BUREAU OF LAW

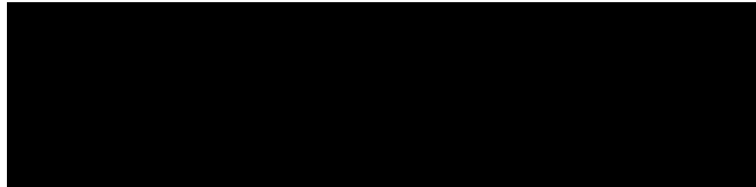
Assistant Chief Counsel  
(Employee Benefits and  
Exempt Organizations)  
Internal Revenue Service  
1111 Constitution Avenue., N.W.  
Washington, D.C. 20224

JUL 22 1991

Attention: CC:IND:1:3

Dear Sir:

In accordance with the coordination procedure established between the Internal Revenue Service and this Board, I am enclosing for your information a copy of an opinion in which I have expressed my determination as to the status under the Railroad Retirement and Railroad Unemployment Insurance Acts of the following:



Sincerely yours,



Steven A. Bartholow  
Deputy General Counsel

Enclosure

UNITED STATES GOVERNMENT

RAILROAD RETIREMENT BOARD

**MEMORANDUM**

TO: Director of Research and Employment Accounts

JUL 17 1991

FROM: Deputy General Counsel

SUBJECT: [REDACTED]

This is in response to your Form G-215 dated April 24, 1991, wherein you requested my opinion as to whether [REDACTED] is an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (hereafter Acts).

According to a letter dated April 8, 1991, from counsel for [REDACTED], [REDACTED] has been in existence since [REDACTED]. It has officers pursuant to Alabama law, but no active employees. [REDACTED] is a wholly owned subsidiary of [REDACTED] and [REDACTED]. These in turn are wholly owned subsidiaries of [REDACTED]. [REDACTED] owns [REDACTED] units of [REDACTED] an electric generating facility, and certain other land and facilities at that location.

In order to supply [REDACTED] with coal to operate its generators, [REDACTED] established [REDACTED] to construct approximately [REDACTED] miles of track between its intersection with the [REDACTED] main line near [REDACTED] and [REDACTED] near [REDACTED]. 1/ In Interstate Commerce Commission (ICC) Finance Docket No. [REDACTED], decided [REDACTED] the ICC found [REDACTED] to be a rail carrier with a common carrier obligation to provide service. In ICC Finance Docket [REDACTED] served [REDACTED], [REDACTED], an employer covered under the Acts, was granted operating authority to operate the rail line in question.

[REDACTED] began operations [REDACTED]. All responsibility for operating and dispatching authority over [REDACTED] has been contracted by [REDACTED] to [REDACTED]. Other companies affiliated with [REDACTED], including [REDACTED], perform no services for [REDACTED].

1/ It appears from the evidence in the file that [REDACTED] is not incorporated and that it has no separate existence but is merely a paper unit of [REDACTED]. It has no employees and no payroll.

Director of Research and Employment Accounts

As noted above, under ICC Finance Docket No. [REDACTED], [REDACTED] has a residual obligation to the ICC to provide rail service over the line in question should [REDACTED] discontinue service. Although [REDACTED] has by contract provided for [REDACTED] to operate the line, the Board had previously held that a company that retains a residual duty to provide service over track which it owns is an employer under the Acts. See Legal Opinion L-40-593, approved by Board Order 41-10. However, in Board Order 89-74 the Board held that a lessor employer, which had sold all its railroad assets so that the lessor no longer had the equipment necessary to resume railroad operations, was no longer an employer under the Acts. See appeal of [REDACTED] B.O. 89-74, April 24, 1989.

In this case [REDACTED] never had any railroad equipment. It has no active employees and is not now operating a railroad nor does it have the capability to do so. It merely owns a line of railroad track which is operated by a rail carrier employer. As such it is analogous to [REDACTED], which was formed in [REDACTED] to purchase [REDACTED] miles of railroad track from [REDACTED] and which leased the track to [REDACTED] an employer under the Acts, which operated rail service over it. [REDACTED] was a subsidiary of a noncarrier and was not affiliated with any railroad company, had no full time employees, and provided no services to [REDACTED], but had a residual obligation to the ICC to provide service should [REDACTED] fail to do so. It was therefore determined in Legal Opinion L-[REDACTED] that [REDACTED] was not an employer under the Acts.

Based on the above, it is my opinion that [REDACTED] is not an employer under the Acts administered by the Board.

An appropriate Form G-215 is attached.

  
Steven A. Bartholow

Attachment

AA: [REDACTED]  
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